

**RUMSON PLANNING BOARD
REGULAR MEETING
MAY 5, 2008
MINUTES**

Chairman Lospinuso called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. The requirements of the Open Public Meetings Act were stated as met. The roll was called, with the following members present: Lospinuso, Rubin, Casazza, Campbell, Shanley, York, Gummer, Vaughan, Hewitt. Also present: Michael Steib (Board Attorney), Bonnie Heard (T&M Assoc.), Fred Andre (Zoning Officer), and Michelle MacPherson (State Shorthand).

Proposed Ordinance Amendment (Outdoor Cafes)

Ms. Heard reported that the Council has considered amending the ordinance to permit outdoor cafes for restaurants, providing that they do not provide any additional seating. These seating areas cannot be within the right-of-way or create any additional lot coverage, floor area, etc. This ordinance would permit usage of this outdoor area from 11:00 a.m. to 10:00 p.m. The general standards would list items such as umbrellas, etc., that would not be permitted to extend beyond the enclosures. The restaurants also would be responsible for keeping the area clean. No additional signs would be allowed. Any deviation of these conditions would require a variance. Music would also not be permitted without a variance. Mr. Vaughan suggested they specifically mention the music, although no public address systems or speakers would be permitted. Undici Restaurant has already requested approval for their restaurant. It was noted that this restaurant is adjacent to River Road, and no changes in lighting would be allowed without Board approval. All existing restaurants would be subject to the general requirements. Administrative approval is allowed, as long as no changes are made to the site. Any changes to the site plan would need Board approval, including outdoor areas. The “no net increase” applies to parking also.

Tom Rogers, Borough Administrator, spoke to say that this ordinance is modeled after other towns that have this type of ordinance in effect and would provide a more “down town” appeal to the town. If the Board feels any areas are missing that could make the ordinance more restrictive, approval could be tabled until the next meeting, when another draft could be presented. Ms. Heard noted that the Planning Board can give recommendations, and these could be added to the proposed ordinance.

Chairman Lospinuso would like to make sure that any unusual lighting be prohibited or require additional Board approval.

Mr. Casazza thinks the 10:00 p.m. restriction may be too early, since this will probably occur more on the weekends. Mr. York thinks the 10:00 p.m. limit should be upheld, due to the noise issue. Mr. Rogers said the existing noise ordinance does distinguish between week days and weekends.

Mr. Steib advised that the Board needs to decide if the proposed ordinance is consistent with the Master Plan and whether there are any recommendations they would like to make, such as the 10:00 p.m. closing and the music and lighting issues.

Mr. Casazza moved to recommend that this ordinance is consistent with the Master Plan and the additional recommendations should be considered. Mr. York seconded.

Roll Call Vote: Ayes – Lospinuso, Rubin, York, Hewitt, Shanley, Campbell, Casazza, Gummer,
Vaughan

Nays – None

Motion carried.

Mr. Rogers thanked the Board for their patience during construction of the new borough hall.

Paula Schildge & Stacey Cohen, 88 & 90 Buena Vista Ave., Amended Minor Subdivision

Mr. Steib noted that since the application has been amended, the applicants have renoticed the property owners, and the notice and service were in order, giving the Board continued jurisdiction. New exhibits have been received since the last meeting:

- A-14 – Correspondence dated 4/2008;
- A-15 – Survey map dated 4/9/08;
- A-16 – Minor Subdivision map dated 4/9/08;
- A-17 – Supplemental report from T&M Assoc dated 4/17/08, indicating the determination of incompleteness. The Board needs to decide whether to grant waivers and proceed with the meeting.

Ms. Heard reviewed the items still incomplete, noting that the taxes have now been paid, and the remainder of the items can be waived, in her opinion, many of which have already been provided or can be conditions of approval. Mr. Shanley moved to waive the outstanding items as recommended by the Borough Engineer. Mr. Vaughan seconded.

Roll Call Vote: Ayes – Lospinuso, Rubin, York, Shanley, Campbell, Casazza, Gummer, Vaughan
Nays – None

Motion carried.

Philip SanFilipo, attorney, appeared on behalf of the applicants. David Yurkanis, professional planner, was sworn in at this time. He provided his credentials, which were accepted. He described the property:

- Lot #8 – Existing lot, 2.827 acres in size;
- Lot #9 – 2.69 acres in size.

These two parcels are being used to create one new parcel (Lot 8.02). Lot #9 will convey land to the owner of Lot #8, so that it conforms to the minimum acreage requirement of 1.5 acres. The property has one variance for lot shape requirement (114'). All other variances are existing nonconformities within Lot #8 that occurred prior to the subdivision and will be part of Lot 8.01 after the subdivision is approved. There is no proposal to shift the common lot line between the two residences, so all nonconformities are pre-existing and will not be altered in any way by this subdivision. Mr. SanFilipo reviewed the nonconformities for Lot #9, including existing side yard setbacks on the north, and the circle requirement, which is diminimus in his opinion and cannot be achieved in any practical way (114.5' provided / 115' required). The building envelope conforms to the front, rear, and side yard setbacks. There is no plan to build a structure on Lot 8.02, and they are only here to obtain the subdivision to permit the applicant to sell the lot to a potential buyer.

A rectangle piece of property between Lot #8 and Lot #9 (24' x 240') will add to Lot 8.02, so that it will be conforming in lot area requirements. After the subdivision is approved, all three lots will comply with the R-1 bulk standard requirements, except for the circle diameter lot shape.

There a two easements along the north of Lot #9 for an existing sanitary sewer and utilities. These were referenced in the report from T&M. This area cannot be built upon, as the majority of this lot is encumbered by existing easements.

Mr. Yurkanis noted some diminimus differences in T&M's completeness report that would not result in the creation of any variances.

Some trees would need to be removed within the new building lot to provide for the construction of the new house. Ms. Heard noted that they would need to comply with the Shade Tree Ordinance before any building could occur. Mr. Casazza would need to know what trees would need to come down before he would want to approve this application. Mr. Andre explained that no significant specimen trees can be removed without Planning Board approval. If they are not removing anything that the ordinance prohibits, they would not need to come back before the Board. Mr. SanFilipo said they do not know what design would be proposed. If the new plan did not comply with the Shade Tree Ordinance, they would need to come back before the Board. Chairman Lospinuso asked about the allowable footprint for the new lot, as it would pertain to the existing trees on the lot. Mr. Steib stated that the Board has a legitimate concern, since one of the things they are considering is whether the proposed lots are developable, and a building footprint would help them to determine this. Mr. Yurkanis said they have a list of all the trees on this site with the size and names, but it is not broken down as to what trees are within the building envelope.

Mrs. Campbell asked what could potentially be built on the property, and it was explained that any proposal would be required to be built within the setback lines. Ms. Heard explained the circle requirement and its goal to provide for regular-shaped lots. Mrs. Campbell also asked about any affect this lot change would have on other nearby lots, and Mr. Yurkanis said it would not have any affect on nearby lots.

Mr. Casazza asked if they considered attempting to limit some of the nonconforming elements on the properties. Mr. SanFilipo said they did not, because all are pre-existing and may be compromised at a future time.

Mr. Vaughan commented that the process started with an attempt to save the house, which was built in 1910. Mrs. Schildge was sworn in at this time and testified that these facts were true. She continues to live in her house.

George Wanat, 14 Conover Lane, was sworn in and expressed his disappointment with the Planning Board for not notifying everyone on Conover Lane of this proposal. He noted that there are many children on the street, and they do not need to contend with more traffic. Three new homes have been built in the past three years, and the neighbors have had to deal with all the construction vehicles over this time. He thinks they should have a rest from this. An additional home will give them additional traffic and is totally unnecessary. He stated that people come to Rumson for peace and tranquility, and this proposal is an attempt to carve up the street to smaller pieces. He thinks Rumson will lose its special character and charm if this is approved. He thinks the Board should deny the application.

Mr. Steib explained the rules for notifying property owners, set forth by the Land Use Law.

Ian Aarenby, 92 Buena Vista Ave., was sworn in and expressed his opposition to the subdivision, because it will change the view, decrease the trees, increase the potential for flooding, add to the existence of other "spec" homes in the same area that remain for sale, along with four other homes that are for sale. He thinks there are more than enough houses in town, and both applicants' houses are also for sale. He feels it will cause degrading of property values.

Donald McDonald, 18 Conover Lane, also expressed opposition to the subdivision, due to the narrowness of the street and the increased construction traffic that they will have to deal with again. He thinks this application intensifies the nonconformities already existing. He also asked about the tree line on the lot

across from his house, and he noted that as a result of recent construction, the water problem was exacerbated. Mr. Vaughan asked if he brought the issue of damage caused by construction vehicles to the town, and Mr. McDonald said he did not, only speaking to the construction people.

Mark Halsband, 100 Buena Vista Ave. was sworn in and agreed with the comments made by Ian Aarenby, noting that there is a bump out situation on Buena Vista Ave., asking if this will accommodate another home. It was noted that the addition of one more residence on the street would not be a problem.

David Wheaton, 8 Conover Lane, was sworn in and expressed his opposition to the application, noting a great resentment from the neighbors. He thinks it is a very bad idea and will have a negative affect on the community. He does not think the Board should approve it. He also mentioned the amount of damage along Conover Lane during recent construction.

Steve Cooper, 16 Conover Lane, was sworn in and echoed the comments heard regarding all the construction that they have had to deal with, noting the dangerous situation that has occurred with the children on the street. He has also had property damage from these trucks, as testified to by other neighbors this evening. He would be very opposed to taking down any trees to build another home and crowd the street even more. Mrs. Gummer asked about the water issues on Conover Lane, and Mr. Cooper said he is closer to Rumson Road and does not get that much water, but he thinks the people down the end of the Lane get it much worse.

Shannon Eadon, 11 Conover Lane, was sworn in and also reported on damage to her property from construction vehicles. She also noted the "spec" houses that are still for sale. She thinks it is a bad decision to wave an LOI in this case. She reported on water problems during heaving rains, due to the removal of trees when the new homes were constructed. She feels taking out more trees would greatly worsen the water problems in the area. Councilman Rubin noted they are only waiving the LOI for the purpose of this hearing, and the applicant would still need to conform to this requirement, before a building permit is issued.

Michael Benedetto, 86 Buena Vista Ave., was sworn in and stated he lives to the north of this subdivision. He questioned Mr. SanFilipo regarding setbacks. He expressed concern that many of the technical requirements are being waived, because there is no construction plan before the Board. They would like to see the plans, so that they can better know what is being proposed for the house. Councilman Rubin explained that any house would need to meet all the town regulations, or go before the Zoning Board for a variance. Mr. Andre stated that any variance would expire in one year.

Mrs. Cohen and Mrs. Schildge were sworn in at this time. Mrs. Schildge reviewed her application to subdivide the property, and she confirmed the fact that both her house and Mrs. Cohen's house were for sale. She does not have any plans to build on the lot.

Mr. Casazza thinks the Board is at a disadvantage when they are asked to approve the subdivision without knowing what building plan would be presented. Mrs. Cohen said she does have conception plans for a home that meets all the requirements. Mr. Casazza thinks showing the Board these plans would be helpful. Mr. SanFilipo noted that Mrs. Cohen and Mrs. Schildge have no plans to build on their lots, and it is not unusual to subdivide property without building plans, after which a builder would provide plans for the actual construction. Mr. Casazza feels the Board would have no idea of water runoff, etc., since they do not have actual plans. Mr. SanFilipo noted that this is why there are ordinances in place to cover

this. The Land Use Law also requires publication in the newspaper for people that do not receive personal notice.

Chairman Lospinuso asked if the applicant could submit more information regarding potential site plans for the new lot, tree removal, etc. Mrs. Schildge testified that most of the landscaping was planted by her, and she thinks that the trees that would need to be removed in the center of the lot would not be specimen trees.

Mr. Steib reviewed the issues raised:

- Narrow Street - This poses problems for construction vehicles encroaching on residential property, which is an enforcement issue and could be communicated to the appropriate people by this Board;
- Tree Removal - The waiver for completeness review does not waive the right to ask for additional information, and this can be requested if the Board feels it is necessary. It is normal to request a building footprint in an area of disturbance;
- Grading and Drainage – The applicant is not proposing any change at this time, and they are providing what the ordinance requires. The applicant should consider submitting a concept to the Board, so they can determine that the storm water is going to be managed and not create any negative site flow.

Mr. Casazza agrees that the Board should request a grading plan, noting that building a home that has been raised creates a problem for the adjoining neighbors, and this is a common occurrence with construction.

Mr. Shanley agreed and thinks they also need an appropriate plan for the trees, including the number that may need to be removed.

Mr. Hewitt thinks grading is a major issue in this wet area.

Mrs. Gummer wants to see something that could potentially be built on the lot.

Mr. McDonald noted that the easement on his property is not shown on their map. Ms. Heard stated they are not required to show easements or restrictions on adjacent properties. Mr. Steib asked if the easement was for his property or the utilities that service the property. Mr. SanFilipo said this easement was not documented in public records. Mr. Steib asked Mr. McDonald to provide the applicant with a copy. Ms. Heard will check with the Water Company.

Mr. Vaughan commented on the opposition to this project, which includes destruction to the neighborhood during construction, as well as the increase in water run off. He noted that some of the houses could have been built before the storm water regulations went into effect. Mr. Andre confirmed that the town received complaints on other homes that were built in this area.

A neighbor from 92 Buena Vista Ave. said they moved from NYC one year ago, and they oppose this application. She noted that the neighbors who spoke in opposition were staying in the neighborhood, and the applicants were leaving the neighborhood. She is also concerned about flooding and the loss of trees.

There were no other questions or comments. Mr. SanFilipo would like to have the application approved this evening, and he reviewed their request for waivers for grading, site plans, etc. The property will be

subject to storm water regulations before any building permit would be granted. He stated that a minimal number of trees would be disturbed on the new lot. The application is essentially conforming, with only minor deviations. It would be unreasonable for the Board to deny the request in light of the conformity of the majority of the R-1 standards. He reviewed that the Board told Mrs. Schildge they would not favor any lot area variances, which is why she has obtained additional property from Mrs. Cohen.

Mr. Shanley noted that the Board has told Mr. SanFilipo what they would like to see to help them better consider the application, and he asked if he wanted a vote this evening. Mr. SanFilipo said if the Board feels this additional information is needed, they would be willing to provide it.

Chairman Lospinuso reviewed the issues raised by the neighbors and by the Board, saying he does not think it is unreasonable for the Board to request more detailed information, so they can better understand what could potentially occur on this lot.

Mr. SanFilipo asked that the application be carried to the June meeting (6/2/08). His request was granted with no further notice required. Mr. Steib asked that any additional information be provided at least 10 days before the next meeting.

Other Business

Mr. Andre reported that a special meeting will be required for the Holy Cross application, and they need some Planning Board members to fill in for the Zoning Board members who are a member of the parish and cannot participate in that hearing. Mr. Hewitt and Mr. Shanley both offered to participate.

There being no further business at this time, motion was made and seconded to adjourn the meeting. Voice Vote: Ayes, unanimous. The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Patricia Murphy